

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARNOLD WILLIAM LEVI,

Plaintiff, No. CIV S-04-2423 DFL KJM P

vs.

TERRY ROSARIO, et al.,

Defendants. ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed under 42 U.S.C. § 1983. By order filed August 4, 2005, plaintiff's complaint was dismissed with leave to file an amended complaint. Plaintiff has now filed an amended complaint.

The amended complaint states a cognizable claim for relief under 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the amended complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of his Eighth Amendment claims against defendants Van Zandt, Michelson and Mitchell; his First Amendment claims against defendants Mitchell, Michelson and Rosario; and his Fourteenth Amendment claims against defendants Walker and Rosario. With respect to the remainder of plaintiff's claims, plaintiff's complaint fails to state a claim upon which relief can be granted. Therefore, the court will only order service of process on the above-named defendants.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Service is appropriate for defendants: Michelson, Mitchell, Rosario, Van Zandt
3 and Walker.

4 2. The Clerk of the Court shall send plaintiff five USM-285 forms, one summons,
5 an instruction sheet and a copy of the amended complaint filed September 6, 2005.

6 3. Within thirty days from the date of this order, plaintiff shall complete the
7 attached Notice of Submission of Documents and submit the following documents to the court:

8 a. The completed Notice of Submission of Documents;

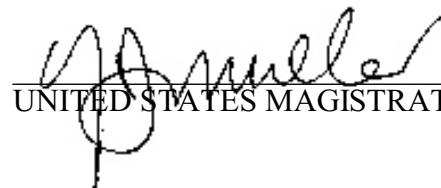
9 b. One completed summons;

10 c. One completed USM-285 form for each defendant listed in number 1
11 above; and

12 d. Six copies of the endorsed amended complaint filed September 6, 2005.

13 4. Plaintiff need not attempt service on defendants and need not request waiver of
14 service. Upon receipt of the above-described documents, the court will direct the United States
15 Marshal to serve the above-named defendants under Federal Rule of Civil Procedure 4 without
16 payment of costs.

17 DATED: May 2, 2006.

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19 _____
20 UNITED STATES MAGISTRATE JUDGE
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24 ¹
25 levi2423.1(9.6.05)
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NOTICE OF SUBMISSION

Defendants. OF DOCUMENTS

_____/

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ 1 completed summons form

_____ 5 completed USM-285 forms

_____ 6 copies of the _____ 9/6/05
Amended Complaint

DATED:

Plaintiff